Supreme Court, U.S.
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No. 92-1042

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1992

NATIONAL COMMODITY AND BARTER ASSOCIATION,
NATIONAL COMMODITY EXCHANGE AND
EXECUTIVE FINANCE COMPANY,

Petitioners,

vs.

UNITED STATES OF AMERICA, and a
GRAND JURY THEREOF,

Respondents.

PETITIONERS' SUPPLEMENTAL APPENDIX

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SUP

APPENDIX E-1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Miscellaneous Action No. 90-Y-20

IN RE: GRAND JURY 89-1
PROCEEDING CONCERNING:

NATIONAL COMMODITY AND BARTER ASSOCIATION; NATIONAL COMMODITY EXCHANGE; PAUL R. CARTER, d/b/a Extra Fast Cash; and EXECUTIVE FINANCE COMPANY,

Petitioners,

-vs-

UNITED STATES OF AMERICA,

Respondent.

ORDER GRANTING IN PART AND DENYING IN PART MOTION FOR CONTEMPT

Sherman G. Finesilver, Chief Judge

This matter comes before the court on respondent's motion for contempt for petitioners' failure to comply with grand jury subpoenas duces tecum, numbers 11479CR through 11482CR, filed October 26, 1990. For the reasons stated below, respondent's motion for contempt is hereby GRANTED IN PART AND DENIED IN PART. Petitioners National Commodity and Barter Association, National Commodity Exchange, and Executive Fi-

nance Company are held in contempt. Petitioner Paul Carter is not held in contempt.[1]

I.

Four subpoenas were served on petitioners on July 6, 1990. On July 20, 1990, petitioners filed an emergency petition to quash the subpoenas. After an evidentiary hearing held on August 6, 1990, the court denied the motion on August 27, 1990. National Commodity & Barter Ass'n v. United States, No. 90-Y-20, slip op. (D.Colo. Aug. 27, 1990).[2]

The court denied a motion to stay compliance on November 29, 1990. National Commodity & Barter Ass'n v. United States, No. 90-Y-20, slip op. (D.Colo. Nov. 29, 1990). The court ordered that petitioners comply by December 10, 1990. On January 3, 1991, the government advised the court that petitioners had not complied with our November 29, 1990 order and sought the issuance of an order to show cause why petitioners should not be

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[1] The court has addressed civil contempt in the grand jury context in In re Grand Jury Proceeding 90-1 (Relating to Donald Bullick), 754 F.Supp. 829 (D.Colo. 1990), and In re Nigro, 555 F.Supp. 65 (D.Colo.), aff'd, 705 F.2d 1124 (10th Cir. 1982), cert. denied, 461 U.S. 927 (1983).

[2] Based upon a substantially similar situation, the court denied a like motion in National Commodity & Barter Ass'n v. United States, No. 90-Y-20, slip op. (D.Colo. May 17, 1990). This order was appealed to the United States Court of Appeals for the Tenth Circuit. Upon the government's motion, the Tenth Circuit agreed to expedite consideration of the appeal. National Commodity & Barter Ass'n v. United States, No. 90-1145, slip op. (10th Cir. Oct. 5, 1990). Oral argument was held before Judges Seth, Moore, and Brorby on March 4, 1991.

held in contempt. A hearing was held on the order to show cause on January 28, 1991. At this hearing, the court ordered the parties to submit briefs regarding the imposition of a contempt citation on Paul Carter, a sole proprietor.

II.

We believe that petitioners National Commodity and Barter Association, National Commodity Exchange, and Executive Finance Company have been provided with more than adequate opportunity to comply with the subpoenas or present just cause for their refusal to comply with this court's orders. They have failed to do both. Accordingly, we find petitioners National Commodity and Barter Association, National Commodity Exchange, and Executive Finance Company in contempt of court.

III.

At the January 28, 1991 hearing, petitioners' exhibit 1 was admitted into evidence, indicating that Paul Carter is a sole proprietor. Under United States v. Doe, 465 U.S. 605 (1984), the owner of a sole proprietorship cannot be compelled to produce business records without a statutory grant of immunity under 18 U.S.C.A. Sections 6002 and 6003 (1985 and West 1990). Id. at 614-17; see also United States v. Clark, 847 F.2d 1467 (10th Cir. 1988); United States v. Schmidt, 816 F.2d 1477, 1480-81 (10th Cir. 1987). He has not been granted immunity. Accordingly, Mr. Carter is not held in contempt of court.

IV.

ACCORDINGLY, it is hereby ordered:

1) Respondent's motion for contempt is hereby GRANTED IN PART AND DENIED IN PART.

2) Petitioners National Commodity and Barter Association,

National Commodity Exchange, and Executive Finance Company are in contempt of court. These parties are ordered to collectively pay $50.00 a day starting from August 27, 1990, until they comply with the subpoenas.

3) Petitioner Paul Carter is not in contempt of court.

Dated this 11th day of April, 1991, at Denver, Colorado.

By the Court:

Sherman G. Finesilver, Chief Judge
United States District Court